

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SOFTWARE RIGHTS ARCHIVE, LLC,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant,

Case No. 12-CV-3970 RMW

**ORDER REGARDING DISCOVERY  
DISPUTE JOINT REPORT # 1**

**[Re: Docket No. 40]**

SOFTWARE RIGHTS ARCHIVE, LLC,

Plaintiff,

v.

LINKEDIN CORPORATION,

Defendant,

Case No. 12-CV-3971-RMW

SOFTWARE RIGHTS ARCHIVE, LLC,

Plaintiff,

v.

TWITTER, INC.,

Defendant.

Case No. 12-CV-3972-RMW

Defendants Facebook, Inc., LinkedIn Corporation, and Twitter, Inc. (collectively, "defendants") seek an order requiring plaintiff Software Rights Archive, LLC ("SRA") to reduce the total number of claims asserted in this action from 74<sup>1</sup> to 30 claims total in advance of the March 29, 2013 deadline for service of invalidity contentions. Defendants argue that requiring SRA to reduce the claims as such "will promote judicial economy and efficiency and streamline this case," while at the same time "giving SRA a sufficient number and diversity of claims to pursue." Disc. Dispute Joint Rep. 2-3 (Dkt. No. 40). Defendants contend that limiting the asserted claims at this stage does not violate SRA's Due Process rights because SRA is permitted to "seek leave to add additional claims upon a showing that the additional claims present unique issues." *Id.* at 3 (citing *In re Katz Call Processing Litigation*, 639 F.3d 1303, 1312 (Fed. Cir. 2011)).

SRA argues that requiring it to select 30 claims at this stage is premature and violates its Due Process rights because, according to SRA, it "has not been provided sufficient discovery as to the accused backend systems of [d]efendants to review issues of infringement and damages." *Id.* 5. SRI alleges that such an order would be akin to requiring SRA to "blindly guess at which claims present unique infringement and validity issues." *Id.* at 6. SRA proposes that it is willing to limit its claims to 30 by August 16, 2013, the court ordered deadline for SRA to serve updated infringement contentions, which SRA alleges will allow for sufficient "technical discovery." *Id.* at 5-6. SRI conditions this proposal on the court ordering defendants "to limit [their] invalidity contentions to four anticipatory and four obviousness combinations." *Id.* at 8.

The court is not persuaded that requiring SRI to limit its asserted claims to 30 at this stage presents any Due Process issue. The Case Management Scheduling Order provides SRI the opportunity to amend its infringement contentions on August 16, 2013, upon a showing of good cause. Dkt. No. 39. To the extent that RSI's technical discovery does give rise to additional

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<sup>1</sup> In this number, defendants include claim 5 of the '571 Patent ("claim 4" appeared twice in RSI's chart, but the second instance of "claim 4" quoted the language of claim 5); claim 28 of the '494 Patent (listed in the pleadings but not charted by SRA); and two claims against Facebook and one against LinkedIn that are dependent on claims cancelled during reexam that were not rewritten in independent form.

1 claims presenting unique questions of validity, RSI can amend its asserted claims at that time to  
2 include those additional claims. However, at this stage, the court believes judicial efficiency and  
3 economy is best served by limiting the number of claims asserted before defendants spend time  
4 and resources preparing invalidity contentions.


5 The court also notes that, to the extent many of the same claims were asserted in SRI's  
6 litigation against Google, Inc. (SRI argues that defendants already "have in their possession  
7 extensive invalidity contentions from the previous case for 43 of the 74 asserted claims," Disc.  
8 Dispute Joint Rep. 7), the fact that the defendant in that case apparently did not seek to limit the  
9 number of claims asserted should not prejudice defendants from doing so here. Since SRI's  
10 action against Google, many of the claims have emerged from reexamination with amendments or  
11 altered scope.

12 Accordingly, the court ORDERS SRI to limit its asserted claims to 30 on or before March  
13 8, 2013, which gives defendants sufficient time (three weeks) to prepare invalidity contentions  
14 with respect to those 30 claims.

15 The court further ORDERS each defendant to limit its invalidity contentions to four  
16 anticipatory references and four obviousness combinations, as the court sees no legitimate basis  
17 for asserting more references in this case.

18  
19 **IT IS SO ORDERED**

20 Dated: February 15, 2013

21   
22 Honorable Ronald M. Whyte  
23 United States District Judge  
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